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CURRENT TOPICS

The Queen's Speech

FOR the first time in history the Gracious Speech from the Throne at the opening of Parliament has reached the people of this country in their homes as a living thing instead of in the form of a list of Bills in cold print. The innovation was an unqualified success and we hope that in future years it will be repeated. The fourth Session of the present Parliament looks like being busy, and in particular it seems that there will be a good deal of lawyers' law in it. We do not doubt that solicitors would have been well pleased if HER MAJESTY had made one more departure from precedent and, after reviewing commonwealth and foreign affairs and telling the Commons that estimates would be laid before them, had announced that the Government would introduce no legislation at all. We doubt whether we shall live to see that happy day, and so even before we have fully digested, and in some cases before we have even tasted, the legislative dishes of last Session we are presented with the menu for the new one.

Laws to Come

SOME of the details of the proposals to encourage home ownership emerged during the course of the debate on the Address. As we said a short time ago, we believe that there is a limit to the number of people who can and will undertake the liabilities of home ownership, and many of those who can prefer to use their talents elsewhere. While we believe we are coming near to the point where further encouragements are likely to produce a diminishing return, there is no doubt that the help will be valuable which the Government intend to give to the building societies in order to enable them to lend money on properties which hitherto they have not regarded as desirable. We hope that this will result in more economic use of existing buildings. Closely allied to the question of home ownership is the announcement that the Government really do intend to do something about compensation on compulsory acquisition. We sympathise with the Government about the jam into which they have got themselves and we shall be exceptionally interested to see how they contrive to extract themselves from it. The Town and Country Planning Bill has just arrived on our desk, and a formidable document it is; we hope to comment on it in next week's issue. Used as we are to hope being deferred, we suppose that even at this late hour we must register delight that war-time controls are to disappear. We have not yet seen the Emergency Laws (Repeal) Bill and so do not know exactly how far the Government intend to go in abolishing economic controls (although we gather that some at least will be retained), but in our view it would be a grave error for them to divest themselves too far of powers to

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order and control the economy in case of need. Reluctant as we are to be cautious in a week during which we have been told that we may take delivery of a new car on payment of only one-tenth of its price, we must recall that the British economy is still a very tender plant. In a few months we have passed from squeeze to relaxation: there is always the fear that some time we may have to pass back.

Prisons and Factories

IN view of Mr. BUTLER'S recent statements, it was reasonable to expect that some attention would be given to prison reform. The difficulty is to decide where to begin. Of more immediate importance to the limited number of solicitors who engage in litigation arising out of factory accidents is the proposal to amend the Factories Acts, but we do not yet know whether the amendments will be radical or not. We are very pleased that the Government are moving so soon to implement the Report of the Royal Commission on Mental Health: the law is many years out of date. As the Government are intending to proceed with a graduated pension scheme this Session, it follows that if the public have any radical objections to the scheme outlined in the recent White Paper they will have to make themselves heard very soon. In view of the complexities of the subject we would have thought it prudent to wait, but presumably we must allow for the fact that a rival firm is competing.

Road Traffic Offences

OUT of 850,000 cases dealt with by magistrates last year, no less than 57 per cent. were prosecutions in respect of road traffic offences, and the importance to many solicitors of decisions affecting this branch of the law needs no further emphasis. As is well known, s. 4 (1) of the Road Traffic Act, 1930, makes it an offence to drive an unlicensed motor vehicle on a road, and s. 35 of the same Act is to a similar effect with regard to insurance against third-party risks. In *Griffin* v. *Squires* (1958), *The Times*, 24th October, the Divisional Court was asked to decide whether " road " (defined by s. 121 as " any highway and any other road to which the public has access, and includes bridges over which a road passes ") includes a municipal car park which the public are allowed to use at all times without payment. With obvious reluctance, their lordships confirmed the decision of the Ashby-de-la-Zouch magistrates who had found that, for the purposes of ss. 4 (1) and 35 of the Act of 1930, such a car park is not a " road." As counsel for the prosecutor pointed out, the effects of this decision may well be startling, but STREATFEILD, J., could see no alternative, as to have held otherwise would have led to the position where a piece of waste land, to which the public habitually resorted for picnics, would also be a " road " within these statutory provisions. Important as this case may be, the Divisional Court's decision in *Lund* v. *Thompson* (1958), *The Times*, 22nd October, can hardly be regarded as of less significance. It appeared that the defendant was served with a notice of intended prosecution in accordance with s. 21 of the 1930 Act and that within a fortnight the police sent him a letter informing him that they did not propose to take the matter any further. The police changed their minds once again and the question arose as to whether the original notice had been invalidated by subsequent events. The court decided that it had not, but DIPLOCK, J., made it clear that this was a practice to be avoided wherever possible as it might lead to considerable injustice.

Taxation Treatment of Deposit Interest on Clients' Moneys

As the Council of The Law Society have recently reaffirmed (*ante*, p. 256), it is permissible for a solicitor to retain for his own benefit interest accruing from clients' money placed on deposit at a bank, except where a specific sum is placed on deposit for a named client or clients, in which case the interest must be credited to the client or clients. A reader of our learned contemporary *Taxation* has raised the question of the correct taxation treatment of interest so retained by a solicitor for his own benefit; is it in the nature of profits of the profession, assessable under Case II of Sched. D and eligible for earned income relief, or is it interest of money, assessable under Case III and not so eligible? At least one inspector of taxes has apparently proposed to treat it in the second way. Replying in its issue of 25th October, 1958, *Taxation* argues that although the money is " interest " it does not arise from investment by the solicitors and is not therefore of a nature intended to be caught by Case III. Referring to The Law Society's recommendation that such interest should wherever possible be credited direct to the solicitor's office account, the author of the reply goes on " Such a direct credit to the office account must, I think, surely be part of the profits of the profession and not interest of money. It is very much better for a solicitor, who can't bear to see the interest wasted, to run his office account on an overdraft and arrange to have, for the purpose of the charging of overdraft interest, the credit balance on the client's current account set against the debit balance on the office account. Honour is then satisfied and no difficulties arise in deciding either to whom the interest belongs or the way in which it is chargeable to tax."

Send it to Sea?

WHEN the Kingston-upon-Thames magistrates decided that a noisy Java mynah was making itself " a serious nuisance " within the meaning of a Surrey County Council byelaw, their decision was not altogether without parallel. In *R.* v. *King* (1895), 59 J.P. 571, a Metropolitan Police magistrate held that the keeping of snakes in premises unfit for that purpose was a nuisance and, in civil cases, although there is no independent tort of nuisance by animals or similar creatures, liability in nuisance has been found to exist in respect of the stench of pigs (*Aldred's Case* (1610), 9 Co. 57*b*), the crowing of cockerels (*Leeman* v. *Montagu* [1936] 2 All E.R. 1677) and the keeping of bees in unreasonable numbers in an unreasonable place (*O'Gorman* v. *O'Gorman* [1903] 2 Ir. R. 394). It is now established that the person who, to the annoyance of his neighbours, keeps a mynah which, *inter alia*, makes wolf whistles and sings " All the nice girls love a sailor " is guilty of an offence, but in this case the owner is now faced with the problem of avoiding further proceedings for the same offence. He does not want to have his bird destroyed, so we would suggest that, because of its obvious nautical bent, a jolly tar should be found who would be prepared to accept the musical mynah in place of his traditional parrot. What would the sailor do with the bird at night? Well, there is always the crow's nest.

Hire Purchase and Hiring Controls Revoked

THE widely publicised revocation of the Hire Purchase and Credit Sale Agreements (Control) Orders and the Control of Hiring Orders took effect on 29th October, the revoking

instruments being S.I. 1958 Nos. 1771 and 1772. The revocation means that the initial down-payment and the period covered by the hire purchase or rental agreement will now be a matter for the trader himself to settle with his customer, but it should be borne in mind that the protection accorded to hirers under the Hire Purchase Acts remains unaffected.

The Study of Crime

IT is now reasonably clear that it is the Government's view that the present disturbing increase in the number of criminal offences cannot best be countered by awarding heavier penalties. At least, it is the declared opinion of Mr. BUTLER that, in general, the sanctions at the disposal of the courts are adequate. In view of this, criminological research assumes a very real importance and we are pleased to note the publication of a further valuable contribution to this field by the Cambridge Department of Criminal Science. While we are encouraged by the prospect of an Institute of Criminology at Cambridge, the work of the existing department should not be overlooked or underestimated. The department's latest report ("The Results of Probation," Macmillan, 21s.) shows that probation is more successful with women than with men and that for both sexes the success rate is higher where the offenders who are placed on probation are more than thirty years of age. A similar pattern is followed in the case of juvenile delinquents and it appears that six in ten boys and nearly eight in ten girls completed their supervision satisfactorily and were not convicted of a further offence during the follow-up period. In all age groups, the success of probation was most marked in the case of first offenders. Research into the causes of crime and the effectiveness of various punishments is not ignored north of the Border. Mr. N. MACPHERSON, the Joint Under-Secretary for Scotland, has recently announced that the Scottish Home Department is to establish its own research unit with which it is hoped that the universities will co-operate to the full.

Passing of the General Claims Tribunal

WITH the bringing into force on 27th October of s. 22 of the Land Powers (Defence) Act, 1958, which was effected by the General Claims Tribunal (Transfer Date) Order, 1958 (S.I. 1958 No. 1752), the General Claims Tribunal set up under the Compensation (Defence) Act, 1939, ceased to exist. Its jurisdiction was simultaneously transferred to the Lands Tribunal under the provisions of s. 22, and the necessary amendments to the Lands Tribunal Rules are made by the Lands Tribunal (Amendment) Rules, 1958 (S.I. 1958 No. 1746).

REPORT OF THE ROYAL COMMISSION ON COMMON LAND—I

THE first reaction of this Journal to the Report was registered in "Current Topics" at p. 533, *ante*, and a summary of the recommendations of the Commission is set out at p. 565, *ante*. But it is not possible fully to appreciate the implications of those recommendations without a more detailed study of the grounds on which they were based; so as busy practitioners may not be able to afford the time to read the Report in full (eminently readable though it is), it is proposed in this and succeeding articles to attempt to summarise, for their benefit, as briefly as practicable, some of its more important aspects.

First, some statistics. The Commission met for the first time in private in December, 1955, to decide their procedure, and subsequently held 36 meetings, extending over 69 days, on 31 of which they sat in public to take oral evidence from witnesses. They received memoranda or evidence from 156 associations, professional bodies, societies and departments and memoranda or letters from 97 individuals, some of whom wrote as members of the public concerned with recreational uses and access over common land, others as persons having private legal interests in particular commons; received reports from 61 county and 81 county borough councils; and took oral evidence from 59 associations, societies, professional bodies and public authorities and from 14 private individuals, all of whom had previously submitted written memoranda. They also had separate meetings with the Chief Land Registrar and the Public Trustee, neither of whom was, however, in any way responsible for the Commission's recommendations made in regard to their functions. And not content with these meetings, in order to absorb "local colour" and get the informal views of the man on the spot they made a point of visiting as many commons as possible, and thus acquired much information of great value which would have been denied them had they kept solely to formal sittings in London (1–6.)* Nobody could reasonably suggest, therefore, that the Commission were anything but thorough in their work, and their unanimous report and recommendations must clearly demand the utmost respect and attention.

In chapter I the Commission briefly indicate the problems arising out of common land; in pt. 1 of chap. II they set out the area and distribution of common land, and in pt. 2 elaborate the definition of the term; in chap. III they deal with the question of the enjoyment of common land by the public; in chap. IV the rights of the commoners; in chap. V the interests of those holding manorial rights; in chap. VI the question of the safeguarding of common land, and where at present little or no use is made of it, its use for some other purpose; and chaps. VII and VIII contain in detail the Commission's recommendations, a summary of which has already been published. Then follow six appendices containing respectively a list of witnesses, correspondents and visits made to common lands, a concise but erudite history of common land by Dr. W. G. Hoskins, a lucid consideration by Sir Ivor Jennings, the chairman, of some legal problems, a summary, by Professor Dudley Stamp, of the Geographical Distribution of Common Land, county by county, extracts from the National Parks and Access to the Countryside Act, 1949, and specimen by-laws made under the Commons Act, 1889, and a glossary of the technical terms employed in the Report.

The historical background

The law relating to common lands, using the term in its popular sense, is extremely complex, for they are, as pointed out by Dr. Hoskins in App. II, of immemorial antiquity,

* The numbers in brackets are references to the numbers of the paragraphs in the Report.

antedating even the manorial system in the organisation of which they were subsequently incorporated. Originally their management was regulated by local custom as an integral part of the open-field system of farming of which they formed part, partly in the local manorial courts and partly in the courts of common law; but no two manors were exactly alike, and the law was in a continuous state of development. At first there was abundant land for everyone, and too few people to colonise or develop it, so that common rights had no need of definition and therefore could not be said to exist; but as the population increased and agriculture developed the rights tended to be limited and defined, first by local custom and then by statute—so that the legal history of common land may be said largely to consist of this limitation and definition and of restrictions on enclosure. The Commons Act, 1236, as extended and confirmed by subsequent Acts, recognised the right of the lord to "approve" or enclose any waste land so long as enough pasture was left for the commoners; and the prosperity of the wool trade in Tudor times led to a great many enclosures; but the agrarian revolution and the consequent desire of farmers to substitute farming in severalty for the old system of common fields resulted in the parliamentary enclosures of the eighteenth century, when practically five million acres of common fields and waste land, or about 13 per cent. of the total area of England and Wales, were enclosed under Private Acts (App. III, 28). By the mid-nineteenth century, however, the social disadvantages of enclosure were becoming apparent, and a series of Acts were passed, which in effect prevented the enclosure of common land without the sanction of Parliament and introduced the then novel rule that before even a provisional order for enclosure could be made the health, comfort and convenience of the local inhabitants should be taken into consideration, referred to since the Act of 1876 as "the benefit of the neighbourhood." There were also Acts dealing with Metropolitan commons and the regulation of commons, and finally ss. 193 and 194 of the Law of Property Act, 1925, which conferred on the public a limited right of access over commons and restricted their fencing. The history of common lands, and some of the legal problems arising out of them, are dealt with at length in Apps. II and III of the Report, and anyone who reads these appendices will not find it surprising, as stated by Sir Ivor Jennings in App. III (4), that there are common lands with no known owners, common lands whose ownership is in dispute, reputed common lands which have no known commoners, lands which are alleged by some to be common lands and by others not to be subject to common rights, lands on which there were and probably still are common rights but which are claimed to be free of common rights, and so forth; and it is to the law relating to these lands that the terms of reference of the Commission were directed.

Extent of the problem

One of the first problems that confronted the Commission was to decide exactly what lands fell within the definition of "common lands," for the term has no precise meaning; its narrowest definition, namely, land subject to common rights at all times of the year, as opposed to commonable land, would not accord with popular usage. So they decided to include, besides land subject to be enclosed under the Inclosure Acts (the usual modern statutory definition), all town and village greens, manorial waste open to public access, whether or not subject to rights of common, roadside wastes, various kinds of "allotments" under Inclosure Acts, such as fuel allotments, etc., and lands held on charitable trusts for similar purposes (75–79; App. III, 34–38).

In introducing, in chapter I, the problem of common land, the Commission do so mainly in terms of two imaginary commons, one in the lowlands, the other in the uplands—imaginary, because the case study of one particular common would give a misleading picture, exaggerating some problems, minimising others. Commons in or near great centres of population are used mainly for the purpose of public recreation, while those further out in the country, though also used for the purpose of popular enjoyment, still have their agricultural and economic uses (1–17). They consider a typical wayside common. Its exact legal status is obscure; it may be a last relic of the open fields, part of the manorial waste that has escaped enclosure, or even a village green; but under modern conditions it is fast deteriorating, and as no one knows who owns the soil, or what rights can be properly exercised over it, no steps are taken to improve it (18–28). They paint a somewhat less dismal picture of a typical upland grazing common, but here again the uncertainty of the rights affecting it prevents those actually and potentially interested from developing it to their full advantage, and the purpose of the Commission has been to discover who those interested persons and bodies are and the nature of their interests, and to recommend what changes in the law are needed both to enable the right balance to be kept between them and at the same time to free desirable individual uses from unnecessary obstruction (48).

No one, it is stated in chapter II, knows for certain exactly how much common land, or reputed common land, there is in England and Wales. The officially quoted figure, which is based on a return made in 1873, but is generally acknowledged to be inaccurate, is 2,368,465 acres; but according to details supplied by various authorities the Commission compute the present acreage to be 1,505,002. But these figures include some land which might on further investigation prove not to be common land at all, and some thousands of acres, such as roadside waste, which may be common land, were omitted from the returns, so the figures given cannot be regarded as anything but approximate; and some counties appear to have decreased, but others to have increased, their acreage of common land; and the conclusion of the Commission is (63) that there could surely be no clearer demonstration of the present unsatisfactory state of our knowledge regarding the extent and status of common land and the urgent necessity for the registration, inspection and recording on maps of the land and the registration of rights later recommended in their report. The chapter contains maps and tables classifying commons by size, and by primary uses, and comparing the acreage in 1873 and now.

D. B. PUGH.

OBITUARY

MR. L. O. NEED

Mr. Leonard Oakden Need, town clerk of Gloucester, died on 21st October, aged 66. He was admitted in 1914.

MR. H. W. D. WILLIAMS

Mr. Henry William Davies Williams, solicitor, of Haverfordwest, died on 22nd October. He was admitted in 1908.

COMPENSATION FOR ACCIDENTS—IV

SCALE OF BENEFITS

COULD the benefits under a comprehensive insurance scheme be assessed on the same basis as common-law damages for negligence are assessed at present? In other words, could compensation be unlimited, and assessed on the basis of a complete indemnity for all losses directly flowing from the injury? Previous schemes have all included a limitation on the amount recoverable, similar to that in the former Workmen's Compensation legislation (e.g., the Report of the Columbia University Committee on Compensation for Automobile Accidents, February, 1932: see 32 Col. L. Rev. 785). It is the fear of rising premiums which has led to these suggestions for a limit to the total compensation payable in respect of death or other specified injuries. A lower scale of compensation than damages at common law has also been justified on the ground that persons who have a greater earning capacity than the average wage earner are able to protect themselves by taking out their own private accident and life insurance, in addition to the cover provided by the Central Insurance Fund.

Any government introducing such a scheme would naturally be cautious, and therefore it would be too much to hope that unlimited compensation would be included in any initial scheme. However, the matter could be reviewed after several years' experience of the working of the new scheme, and it might then be found possible to remove any limits without imposing too great a burden on motorists or the Exchequer. If it is urged that an ultimate scheme with no limit on compensation but the present common-law rules as to remoteness would unduly favour a wealthy victim compared with a wage-earning victim, one answer could be that the wealthy victim would have contributed more to the fund, whether directly through payment of premiums on his motor car (premiums could be scaled according to the size or value of the car) or indirectly through the payment of more income tax. Furthermore, even under the compulsory insurance system now in force, a victim with a higher earning capacity than average will in fact at common law receive higher damages from the negligent defendant's insurance company. So the result would not be different, except in so far as the new scheme would cover a wider category of victims.

But for the initial period of the Central Insurance Fund some limit on the amounts of compensation payable would probably be required; it is suggested that the limits should be on a generous scale. Damages for pain and suffering should not be excluded (despite their exclusion from the Columbia Scheme) since they are recoverable under the present system of compulsory insurance, and afford some mitigation of what is a serious aspect of bodily injury.

It is true that the Home Office presented a memorandum (Appendix M, Cmd. 134) to the House of Lords Select Committee in 1933 saying that it would be too difficult to devise a scale of compensation for road accidents (similar to Workmen's Compensation) when a victim was not earning anything but was dependent on another person or on a private income. But it is submitted that the Home Office overestimated the difficulties; under the scheme actual loss of income could be payable, subject to a weekly limit. The Saskatchewan Scheme has been working since 1946 on this basis, and even paying, for instance, a weekly indemnity for loss of "income" where a housewife is totally disabled. Arthur Suzman, Q.C., in (1955), 72 *South African Law Journal* 374, makes the interesting suggestion that compensation in all cases should be on a periodic rather than a lump-sum basis, and that the amount awarded should be subject to review at any time at the instance of either the claimant or the Central Insurance Fund. He instances as grounds for such review the possibility of increased or decreased incapacity, and the termination of dependency through remarriage or children becoming self-supporting. Though this provision would no doubt make administration of the scheme more difficult because final settlement of claims would be postponed, it is worth serious consideration since it might be cheaper for the fund in the long run, and might achieve a fairer result in individual circumstances.

Alternative remedies

While considering the scale of benefits, we should advert to another difficult problem. Should the compensation scheme for road accidents exclude all other remedies at common law or under the National Insurance Acts in respect of such accidents? The Columbia Report was against alternative remedies, on the ground that if the road victim had an option, either to claim compensation benefits or to bring an action at common law for negligence, the motorist must carry two kinds of insurance for full protection. It is interesting to note that there have been recent suggestions that the National Insurance (Industrial Injuries) Scheme should be made the exclusive remedy for injuries arising out of and in the course of a man's employment. (See D. J. Payne in [1957] *Current Legal Problems*, p. 85.) At the moment an employer must in practice not only pay his contributions to the Industrial Injuries Fund, but he must also take out separate insurance to cover his common-law liability (e.g., failure to provide a safe system of working) and his civil liability to pay damages for the breach of a provision in the Factories Act. Many injured employees to-day try to obtain more compensation than that provided by the Industrial Injuries Fund by suing their employers on such grounds for damages at common law. This leads to the same kind of costly gambling in litigation which the original Workmen's Compensation Scheme was designed to obviate. Mr. Payne suggests that a more equitable distribution of compensation to injured employees would be achieved if the premiums now paid for common-law liability insurance policies went to swell the Industrial Injuries Fund so that higher benefits could be paid to all injured employees. It is submitted that the same arguments hold good in the case of a comprehensive road accident insurance scheme, and that if adopted it should exclude of all other remedies for road accidents.

Negligence of claimant

A stumbling block in any scheme for compensation irrespective of fault is the problem of contributory negligence. Should any negligence of the claimant causing or contributing to his injury be taken into account in assessing the amount of compensation due to him from the Central Insurance Fund? At first, it is all too easy to insist that in such cases there must be a proportionate reduction in the compensation, but on reflection the writer is definitely against this view. If the fault of the victim reduces the amount of compensation, this is simply repeating in another guise the out-dated approach in which fault is linked with compensation. Once

we accept the modern concept of comprehensive accident insurance, it is a fallacy to allow any question of fault, whether of the victim or of another person, to influence the payment of compensation. The aim of discouraging fault, even in the victim, should be the concern of the criminal law only.

Again, from a practical point of view, it would be disastrous to permit the negligence of the claimant to be a relevant factor in assessing compensation. For it would involve, in each accident, a full examination of all the circumstances in order to determine whether the claimant was at fault; since the whole aim of the scheme is to avoid such a minute and costly examination in searching for the fault of any one other than the victim, the same considerations should lead to our abandoning the search for any fault in the victim.

Moreover, the fear of physical injury to oneself is undoubtedly a psychological deterrent against negligence, quite apart from the question of compensation. The fear of compensation being reduced on the ground of contributory negligence probably has no psychological effect at all on the minds of careless people. In any event, even payment of full compensation cannot restore a victim to full health again and the knowledge that by his own care he could have avoided the injury will be more than a sufficient deterrent to him in the future.

Again, if the Central Insurance Fund is regarded as a personal road accident insurance policy taken out compulsorily on behalf of all potential victims, then contributory negligence should be irrelevant since it would be one of the risks insured against. For over a century, negligence of the claimant has been irrelevant in fire insurance, but this fact has not made people less careful in regard to their material possessions, though there is here no psychological deterrent through fear of personal injury to themselves. The scheme should, however, be guarded against the rare instances where a claimant intentionally causes injury to himself, as in the case of suicide or attempted suicide by deliberately causing a road accident. The Columbia Plan excluded liability where the person injured or killed wilfully intended to cause injury to himself or to another.

If the fault of the victim is irrelevant in the new scheme, on the ground that the scheme is for *accident* insurance, rather than for *liability* insurance, the scheme could provide compensation where only one vehicle was involved and its driver was the only victim of the accident; on the same basis, the scheme could cover injury to a spouse where the other spouse was involved as a driver.

Property damage

Should the scheme be limited to cases where death or bodily injury is suffered or could it be extended to property damage as well? The present legislation for compulsory insurance covers only death or bodily injury, so we have the view of Parliament that the need is greatest in the case of such injuries. In any running-down case the damages claimed in respect of personal injuries are usually far higher than damages for injury to property. Bodily injury not only involves human suffering, but it has a direct effect on the victim's earning capacity after the accident. A property loss can normally be replaced or repaired, but bodily injuries frequently leave a permanent disability which the victim must endure for the rest of his life. Hence the scheme, as a practical matter, should exclude property damage in the first place, though there is no logical reason why property damage should not eventually be covered by the scheme once it is well established. (This is what has actually happened in Saskatchewan.) The temporary exclusion of property damage would unfortunately lead to the practical necessity of private insurance to cover this risk meanwhile, but sometimes other forms of insurance (e.g., baggage insurance, or householders' comprehensive insurance) will cover the damage to chattels caused by a road accident.

Compensation through insurance irrespective of fault for all accidents

The previous discussion inevitably leads to the question whether the injured road user should have an advantage not enjoyed by people injured elsewhere. If the principle of compensation through insurance irrespective of fault is considered worthwhile in regard to road accidents, is there any difference between road and other accidents which justifies separate treatment of the former? It must be admitted that fundamentally there is no such difference. We have considered the case of road accidents at length because it is here that the law has already advanced a long way towards universal and compulsory insurance, and hence it is likely that compensation without regard to fault will first be realised in this sphere. The large number of road accidents, and the fact that no member of our modern community can avoid the risk of such accidents, justify this preferential treatment for road victims. But the success of the new principle in the case of road accidents would undoubtedly lead to demands that it should be extended to cover all major accidents wherever they occur. Perhaps in a century's time our present law of torts will be mainly superseded by comprehensive insurance schemes, so that a person suffering a special or unusual loss will be compensated through a compulsory distribution of all serious risks over the whole population. This, it is submitted, is the probable outcome of the political principles embodied in the Welfare State.

This kind of development is by no means unknown to-day in other spheres: we already have the National Insurance Scheme, the Industrial Injuries Scheme, etc., so that the State organises universal compensation, irrespective of fault, for such common tribulations as illness requiring medical treatment, accidents at work, and unemployment. The present scheme is only the reflection of these Welfare State concepts in the realm of personal injuries suffered on the road. If we accept the scheme, we must then rely almost exclusively on the criminal law to deter or punish conduct which is socially undesirable. (It is interesting to note that the organisation "Justice" has recently suggested that the victims of crimes of violence should receive compensation from public funds in cases where the criminal is without funds.)

Some parts of the law of torts would no doubt still be necessary, even if the principle of universal compensation through insurance was applied wherever possible. Torts involving malice and intentional conduct, such as malicious prosecution, defamation, and torts determining questions of title or possession, such as trespass and conversion, could not be adequately replaced by insurance schemes. But all torts not depending on intentional misconduct, such as liability for negligence, or strict liability for animals, or under the *Rylands* v. *Fletcher* principle, are particularly suitable for comprehensive insurance schemes to ensure payment of compensation to the injured person.

The tendency of recent cases in the law of torts is away from the notion of fault and more towards the notion of compensation. Unconsciously courts and lawyers are thinking

more of the question : " Who can best bear this loss ? " than of the question : " Whose fault led to this loss ? " The extension of vicarious liability this century is a notable example of this tendency, and is due to the idea that the master is usually more able to pay damages than his tortfeasor-servant. For the master is in a much better position than the servant to distribute this burden over the community by paying insurance premiums, and then recouping his additional expense by an increase in the cost of his product or services. We are becoming more and more " insurance-minded," and the scheme advocated in these articles is simply an extension of the insurance cover which we all accept to-day as necessary. No voice is heard to-day deploring the legislation requiring compulsory motor insurance, though there were many prophets of doom in 1930. The major step in regard to insurance for road accidents was taken in 1930, since most road accidents are due to negligence, and more often than not it is the negligence of the driver of a motor vehicle. The present scheme is really the logical culmination of the 1930–34 legislation, and of the formation of the Motor Insurers' Bureau in 1946 ; it is simply the ultimate advance in an " insurance " approach to road accidents.

" Public policy " is a rather vague concept depending on many different social considerations, but it is the basis of all legislation. If public policy yesterday demanded an extension of tortious liability without fault, and compelled insurance against the " fault " liability of motorists, public policy in the changed conditions of to-day may well require a combination of compulsory insurance with the principle of compensation to victims irrespective of fault. The net result would be to relegate the principle of fault in all its forms to criminal law, and to replace it in the civil law with the economic principle of spreading the risks of injury and loss over the community at large. The Columbia Report, in pleading for such a change in the case of road accidents, put it aptly in recommending " a more scientific distribution of inevitable risks which are incidental to an important and necessary activity in modern society."

D. R. H.

(Concluded)

Common Law Commentary

DEFEASIBLE ACCEPTANCE

In *McDougall* v. *Aeromarine of Emsworth, Ltd.* (*The Times*, 17th October, 1958), Diplock, J., adopts a principle to be found in *Colonial Insurance Co. of New Zealand* v. *Adelaide Marine Insurance Co.* (1886), 12 App. Cas. 128. It is a principle which seems to have been overlooked or rejected for too long a time, namely, that where a person takes delivery of goods which are subsequently found not to be of the standard of quality that the purchaser was entitled to expect, his acceptance of the delivery may be treated as either not passing the property in the goods at all, or passing it only defeasibly, so that the purchaser may, when he discovers the defects, and notwithstanding that the contract is for the sale of specific goods, reject those goods.

In *McDougall's* case the contract was for the construction of a pleasure yacht and was in a standard form sponsored by the Ship and Boat Builders National Federation. Clause 8 provided that the property in the vessel should pass to the purchaser on payment of the first instalment of the purchase price (which was payable by seven instalments) and that there should also pass all equipment, materials, fittings and machinery purchased specifically for the construction of the yacht. It is not clear from the newspaper report at what time these latter were to pass to the purchaser, but presumably it was immediately on the purchase of them, or on allocation to the vessel where, at the time of purchase, the materials were not necessarily intended for that vessel under construction.

When the yacht was completed and sent for acceptance trials it was found unseaworthy, and although there was later a re-launching, the vessel was still found not to be in a deliverable state according to the report.

No decision on the meaning of the above clause could be found although the wording had been in use for some fifty years. His lordship did not feel that he could construe the clause to mean that the property in the craft or in the equipment (which were not in being when the first instalment was paid) would pass to the purchaser. No doubt the clause was designed to protect the purchaser against the insolvency of the builder, but it was inapt to operate on materials to be acquired in the future. But the learned judge added that if he were wrong on this point, so that the clause was able to pass the property in the construction as it took shape and proceeded to completion, the passing of the property was defeasible so as not to preclude a right of rejection by the buyer.

The sale of a ship to be constructed was treated in *Reid* v. *McBeth & Gray* [1904] A.C. 223 as a sale of goods (but on this point see *Hooper* v. *Gumm* (1867), 2 Ch. App. 282, where it was said that a ship does not pass by delivery and that there is no market overt for ships; these principles may be limited to ships built and commissioned). There are, then, two different situations which may be considered : first, where the contract specifically deals with the passing of the property in the craft or parts thereof allocated to the contract or affixed to those parts which have been so allocated, as was the case here ; secondly, where the contract is silent on this matter. As we have seen the judge felt himself free to construe the express term as, at most, conferring a defeasible property on the purchaser. No doubt in exercising his right of defeasance the purchaser must act with reasonable promptness and before he has done anything substantial which is inconsistent with rejection.

Sale of Goods Act, s. 18

Where there are no express terms it will be necessary to apply s. 18 of the Sale of Goods Act. In that section of the Act there are set out five rules for ascertaining the intention of the parties. But those rules are not exhaustive of all possibilities—or at any rate they leave doubts as to the correct rule to be applied—because they do not seem to provide directly and clearly for this type of case. Rule 1 is concerned with the sale of specific goods in a deliverable state, which is not this case. Rule 2 is also concerned with the sale of specific goods but deals with the case where the seller is bound to " do something to the goods for the purpose of

putting them into a deliverable state," which is a little closer but not clearly our case. Rule 3 is concerned with cases where the seller is to weigh or measure specific goods, and r. 4 with the delivery of goods on sale or return. We are then left with the last rule, which is the closest of them all to the facts of the above case, because it covers cases of the sale of future goods by description and lays down in sub-r. (1) that when goods of that description in a deliverable state are unconditionally appropriated to the contract the property therein passes to the buyer, whilst sub-r. (2) says that a seller is deemed to have unconditionally appropriated goods to the contract when he delivers them to the buyer.

This question as to which rule applies where there is no specific provision has arisen several times before. Generally, r. 5 has been applied but sometimes it has been r. 2. Where a man agrees to build a ship to a particular design he may make two ships and deliver either of them; and until he decides which of the two he will deliver neither can pass to the buyer. But that is somewhat theoretical, for in practice, except in the manufacture of small boats of a common pattern, a shipbuilder will build one vessel only for a given contract, and soon after the keel is laid it is most probable that the parties will have agreed that "a certain new building, yard number . . ." is the construction which is to produce the vessel contracted for, and that the seller would break his contract if he delivered anything else however closely resembling it (see, e.g., *Clarke* v. *Spence* (1836), 4 A. & E. 448, and *Laidler* v. *Burlinson* (1837), 2 M. & W. 602). In *Seath* v. *Moore* (1886), 11 App. Cas. 350 (also concerned with a ship), the House of Lords said that there was no distinction between cases concerning the construction of ships and other cases of the manufacture of goods.

Other provisions of the Act

What is important, arising out of *McDougall's* case, *supra*, is the question whether this concept of a defeasible conferring of property, which seems extremely useful, can be applied to cases where the contract is silent and the statutory rules as to presumptions of intention have to be applied. Is there room for reading into the Act the conferring of a defeasible title? In this connection, s. 11 (1) (*c*) of the Act becomes relevant: this lays down that where the buyer has accepted goods or where the contract is for the sale of specific goods the property in which has passed to the buyer, the breach of any condition (and unseaworthiness is surely a breach of a condition) to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods unless there be a term of the contract express or implied to that effect. There is also s. 34, which lays down that where goods which he has not previously examined are delivered to the buyer he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract. There are many cases on these provisions and a host of arguments suggest themselves on considering those sections. It is surprising that, although we are dealing with everyday problems in relation to basically simple concepts, there is a wide field still to be fully explored, in which there is room for many more limited areas to be marked out.

L. W. M.

The Practitioner's Dictionary

"ON"

WHERE a period of time is stipulated to begin "on" a certain day, as a general rule that day will be included. Perhaps the best authority for this assertion may be found in *Sidebotham* v. *Holland* [1895] 1 Q.B. 379, where the Court of Appeal was required to interpret the term of a written agreement for the letting of a house which provided that the tenancy should commence "on the 19th of May." In a judgment with which Lord Halsbury concurred, Lindley, L.J., admitted that "the tenant can hardly in fact have been in possession the whole of that day, yet, in point of law, that day must be treated as the first day of the tenancy and as part of the term for which the house was agreed to be let. The tenancy cannot therefore be treated as commencing on the 20th to the exclusion of the 19th." Similarly, A. L. Smith, L.J., could not bring himself to hold "that where a written agreement states that a person shall become a yearly tenant 'commencing on the 19th of May,' that it means that he shall become such tenant 'commencing on the day after the 19th of May.'"

Another aspect of the matter arose in *Harman* v. *Owden* (1700), 1 Ld. Raym. 620. In that case there was an agreement for the delivery of forty-five quarters of oatmeal "on or before" a certain day and, had it been necessary, it is clear that Holt, C.J., would have decided that delivery during the day mentioned in the contract would have been sufficient performance. The expression "on or after" was considered in *Associated London Properties, Ltd.* v. *Sheridan* (1946), 174 L.T. 103, where, in a lease of a flat, it was provided that "if on or after 24th June, 1945, either party shall desire to determine this lease and shall give to the other of them two quarters' previous notice in writing . . . this lease . . . shall cease." The lessor gave the lessee notice to quit under that clause to expire on 24th June, 1945, and Wrottesley, J., took the view that on the true construction of the material clause the lessor was entitled to give notice to run from a date not earlier than 24th June, 1945. In other words, the court found that the word "on" was inclusive.

The phrase "on or about" was interpreted in the South Australian case of *Blackett* v. *Clutterbuck Bros.* (*Adelaide*), *Ltd.* [1923] S.A.S.R. 301. The parties contracted for the sale and purchase of a Massey-Harris binder to be delivered "on or about 1st October, 1922." The binder was forwarded by rail on 2nd September of that year and it arrived at its destination a day or two after its despatch. The purchaser refused to take delivery and it was decided that he was entitled to do so as the time of delivery did not comply with the term of the contract which required delivery to be made "on or about 1st October." Murray, C.J., found that in this context "a day or two on either side or perhaps three . . . would . . . be the most that could reasonably be held to be covered by the expression."

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QUICK SUCCESSION ALLOWANCE

CONSIDERABLE revision of the passages in text-books dealing with quick succession relief will be necessitated as a result of the enactment of s. 30 of the Finance Act, 1958. In cases of deaths occurring after 15th April, 1958, this section replaces and extends the relief formerly available under the Finance Act, 1914, s. 15 (now repealed by the Finance Act, 1958, Sched. IX, Pt. IV).

Subsection (1) of the new section provides that where estate duty becomes payable on any property on a death occurring after 15th April, 1958, and (*a*) estate duty has been payable on the same property on an earlier death occurring within five years before the later death, and (*b*) the person entitled to the property immediately before the later death did not acquire his title by or under a consideration in money or money's worth made since the earlier death (whether by him or another) then the allowance shall operate. The relief takes the form of reduction of the amount of estate duty payable on the property on the later death on a sliding scale. The maximum relief available is a new one, estimated to cost the Exchequer £100,000 in a full year, and reduces the estate duty payable on the later death by 75 per cent. where it takes place within three months of the earlier death. The amounts and time limits of the remaining reliefs are the same as under the Finance Act, 1914, namely, 50 per cent. where the later death occurs within one year of the earlier, 40 per cent. for a gap not exceeding two years, 30 per cent. for three years, 20 per cent. for four years and 10 per cent. for an interval of not more than five years between the two deaths.

The 1914 quick succession allowance only applied in respect of property consisting of land or a business (not being a business carried on by a company), or any interest in land or such a business. Subsequently, in respect of deaths occurring on or after 30th July, 1954, the allowance was extended to cover shares or debentures which had to be valued on two successive deaths by reference to the company's assets under s. 55 of the Finance Act, 1940. This extension was effected by the Finance Act, 1954, s. 30 (4) (also repealed by the Finance Act, 1958, Sched. IX, Pt. IV).

Cost of widening the allowance

As the new section is not restricted in its application but affects all property, it will become better known and more frequently invoked than its predecessor. The justification for the introduction of the quick succession relief in 1914 was the difficulty of raising two lots of duty out of agricultural land or family businesses without selling such property. Although the 1914 Finance Act raised the rates of estate duty it is noteworthy that then an estate not in excess of £20,000 paid at the rate of 5 per cent. compared with 12 per cent. to-day, one not in excess of £150,000 paid 10 per cent. as against 50 per cent. now and the top rate for estates of over £1m. was 20 per cent. or one-quarter of the present burden of 80 per cent. on such estates. (To-day, however, the agricultural value of agricultural property is entitled to a concession making it chargeable at 55 per cent. of the rate for other property—Finance Act, 1949, s. 28 (1).) In supporting the widening of the relief on the committee stage of the Bill, the Financial Secretary to the Treasury (Mr. J. E. S. Simon) referred to the feeling that estate duty should not strike more than once in a generation and that in general it is unfair to levy the full duty twice in quick succession (*Hansard*, Commons, 1st July, 1958, col. 1260). The widening of the quick succession allowance was estimated to cost £3m. in a full year apart from the extra cost, referred to above, in connection with the 75 per cent. relief on successions within three months of first deaths. The estimates of these costs must be approximate and broadly based and it will be interesting to compare them with actual resulting future losses of revenues.

Consequences of extension of allowance

Certain complexities will be swept away under the new and widened relief. Refinements as to the precise meaning of "land" and "business" will not require to be argued with the Estate Duty Office and *Glen* v. *Inland Revenue* [1926] S.C. 44 will not be an obstacle to the claiming of the relief. That case made it necessary to show that for an interest in land or a business to fall within the section it must be such that its exhaustion through paying repeated estate duty claims would be detrimental to the landed estate or business.

On the other hand, the detailed provisions of s. 30 of and Sched. VIII to the Finance Act, 1958, will require careful scrutiny. Relief is limited to the net value of the property after the earlier death in cases where subsequently the value of the property has risen (s. 30 (2)). Relief may not be given on any death in respect of the same property by reference to more than one earlier death (s. 30 (3)). This appears to modify the conditions as to the former relief as it seems that formerly if there were successive deaths at intervals of less than five years there could be an allowance on each death (cf. Green's Death Duties, 4th ed., p. 258).

By its reference to consideration in money or money's worth, s. 30 (1) (*b*), quoted above (as amplified by Sched. VIII, paras. 1 and 3), removes the disadvantage of an appropriation to a pecuniary or residuary legatee being regarded as a sale, and so disqualified for the allowance in the absence of an express power of appropriation (not requiring the beneficiary's consent) in the will or settlement. A similar disadvantage should now disappear also in the case of a spouse requiring the personal representatives to appropriate the matrimonial home towards satisfaction of any absolute interest of the surviving spouse under the Intestates' Estates Act, 1952, s. 5 and Sched. II. From the stamp duty aspect, however, it is still desirable to include express powers of appropriation in wills.

Schedule VIII to the Finance Act, 1958, sets out at length tests designed to determine whether the identity of the property in question at both deaths is the same. These complex provisions put one in mind of s. 38 of the Finance Act, 1957, on the tracing of gifts *inter vivos*. The position is unchanged that there is a double chance of the allowance applying on a remainderman's death where a life interest in property is left with remainder over (cf. Sched. VIII, para. 3).

One consequence of the widening of quick succession relief to all types of property may be to reduce dispositions of property for money or money's worth. Paragraph 2 (2) of Sched. VIII provides in effect that where the (second) deceased received on the earlier death property other than a sum of money, and subsequently sold the same, that property must be regarded as consisting of a sum of money equal to the net value of that property after the earlier death, or to the amount or value (at the time when he ceased to have possession and enjoyment of that property) of what he so received in substitution for that property, whichever be less. In

cases of property of depreciating value, from the point of view of this allowance, sales should be discouraged if it is likely that the second death will occur within five years of the first. This eventuality is more probable in cases of bequests to members of the testator's own generation, such as between spouses (where an absolute gift is made in addition to or instead of a life interest subsequently exempted from estate duty on the death of the surviving spouse under the Finance Act, 1894, s. 5 (2), and the Finance Act, 1914, s. 14 (*a*)), or between siblings. No doubt where part only of the property in question has been sold, appropriate apportionments will have to be made.

The widening of the scope of the quick succession allowance is a useful measure for those upon whom the burden of estate duty is liable to fall. Survivorship clauses in wills, however, are still desirable to guard against, for example, one spouse surviving the other by a matter of days or weeks only after, say, an accident involving both. The extension of this allowance leads one to hope that one day a Chancellor will introduce a similar measure, with the percentages inverted but the periods of time (from the date of gift) unchanged, to reduce the gambling element in making gifts *inter vivos* under the five-year rule.

N. D. V.

Landlord and Tenant Notebook

PLEADING CLAIM FOR DECONTROLLED PREMISES

SOME bewilderment about how to claim possession of decontrolled premises is, I believe, largely ascribable to the atmosphere created by a long series of rent control statutes, though some misunderstanding of Rules of Court made under the Landlord and Tenant (Temporary Provisions) Act, 1958, may have something to do with it.

In order to appreciate the position it is desirable to consider the nature, objects and scheme of the Act—which I propose to call the "1958 Act"—in a general way; and, adopting the reasoning of Mr. Sherlock Holmes in the case in which the dog did nothing in the night, I will suggest that inferences be drawn from the absence of certain features.

Not an amending Act

The "Notebook" is, of course, not concerned with politics; I am aware that members of one party have called the 1958 Act an amending Act, and those of another—that which introduced the measure—have vehemently denied the assertion; but all I have to say about it is that it is not, from a legal viewpoint, an amending enactment. The Increase of Rent, etc. (Restrictions) Act, 1938 (passed when hopes, entertained at the time when the Rent, etc., Restriction (Amendment) Act, 1933, was enacted, had not been fulfilled), was an amending Act, headed "An Act to amend and continue the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1935"; the Rent, etc., Interest Restrictions Act, 1939, though its title did not mention amendment, was headed "An Act to continue and amend the Rent and Mortgage Interest Restrictions Acts, 1920 to 1938"; the heading of the Housing Repairs and Rents Act, 1954, speaks of amending enactments relating to rent control. The Rent Act, 1957, is headed "An Act to amend the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939 . . . the Furnished Houses (Rent Control) Act, 1946 . . . and certain other enactments relating to the control of rents and the right to retain possession of houses . . ."

But the 1958 Act calls itself "An Act to prohibit the recovery of possession, except by legal proceedings, of certain dwelling-houses, released from control by subs. (1) of s. 11 of the Rent Act, 1957, and to provide in certain cases for suspending for a limited period the execution of any order made in such proceedings; to regulate the terms and conditions as to rent and other matters to be applied in cases where possession of such dwelling-houses is retained pending the recovery of possession . . ."

Owner *v.* occupier

Headings are not part of the law; it may be thought that I have attached undue significance to their contents. But the same cannot be said of the absence of any reference to "landlord" and "tenant" in the 1958 Act except in s. 1 (2), which makes one of the conditions of protection a notice "served on the tenant by the landlord . . . under Sched. IV, para. 2 (2) to that [the 1957 Rent] Act." Such a notice—the familiar Form S notice—having been served and expired, and the recipient not having complied with it, the parties are consistently called "owner" and "occupier."

The position is that anyone protected by the 1958 Act must have gone through a number of stages. There was once a contract of tenancy, either between him and the claimant or the claimant's predecessor in title or between some relative of his and the claimant, the Increase of Rent, etc., Restrictions Act, 1920, s. 12 (1) (*g*), having effected a "transmission on death." There was, in most cases, a so-called "statutory tenancy," exposition of the nature of which occupies four pages of "Megarry"; suffice it to say, for present purposes, that it is a right to retain possession of the dwelling-house, observing and being entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of the Acts (see the Increase of Rent, etc., Restrictions Act, 1920, s. 15 (1)). And the recipient of the Form S notice must have occupied under "a right to retain possession of the dwelling-house in the like circumstances, to the like extent and subject to the like provisions . . . as if the Rent Acts had not ceased to apply to the dwelling-house": Rent Act, 1957, Sched. IV, para. 2 (1).

The last mentioned sub-paragraph of the Schedule concerned with "Transitional Provisions on Decontrol" does call him a tenant. But the 1958 Act adopts the attitude that this really is for the last time. And mention may be made here of the provision in s. 2 (4): "Nothing in this section shall be construed as conferring on the occupier of the dwelling-house any estate or interest, nor as affecting the right of the owner, subject to any other provision of this Act, to recover possession of the dwelling-house at any time without notice or further notice to quit." Lush, J.'s characterisation of a statutory tenancy as "nothing more than a status of irremovability" (*Keeves* v. *Dean* [1924] 1 K.B. 685 (C.A.)) may have been a picturesque exaggeration of the limitations, but might well apply to the rights of an occupier under the 1958 Act.

Scheme of the 1958 Act

So much for the extent of the protection. Attempting to summarise how that protection is preserved, I would say that it ensures that the owner, though the occupier's right to retain possession in like circumstances, etc. (Rent Act, 1957, Sched. IV, para. 2 (1), *supra*) has come to an end, may not re-enter forcibly or peaceably but must bring an action; whereupon the occupier, who has no defence to the action, may seek, and possibly be granted, a suspension of the order for possession.

There is nothing about the form which the owner's proceedings must take. Nor, for that matter, is there anything in the Rent Acts themselves about the form which a claim for possession must take. As regards security of tenure, those Acts operate, as was clearly pointed out in *Barton* v. *Fincham* [1921] 2 K.B. 291 (C.A.), by limiting jurisdiction: a fetter is placed on the court rather than on the landlord, as Bankes, L.J., put it. And in theory, at all events, a landlord can bring his action basing his claim on the determination of the contractual tenancy and on nothing else; as what matters is the state of affairs existing at the time of the hearing, not at the date of issue of proceedings, a landlord might, after indicating his intention to claim on the ground, say, that he reasonably required the dwelling-house as a residence for himself, find some suitable alternative accommodation for the tenant the day before the trial, and ask for an order on the ground of its availability: no doubt an adjournment would be granted, but there would be no defect in the particulars of claim: see *Benninga (Mitcham), Ltd.* v. *Bijstra* [1946] K.B. 58 (C.A.). (In practice, a 1955 amendment of Ord. 7, r. 3, made statement of "ground" obligatory.)

Form

The 1958 Act does not prescribe any form of proceeding either (I will deal with "applications" later). The plaintiff has not got to show that the court has jurisdiction. The position is governed by Ord. 7, r. 1 (1) and (3), of the County Court Rules when county court proceedings are taken (and s. 4 (1) provides that county courts are to have jurisdiction in all such cases); by R.S.C., Ord. 20, if the action is brought in the High Court. Particulars, or statement of claim, can be phrased as follows:—

"1. The plaintiff is entitled to the possession of a dwelling-house known as . . . to which the Rent Acts ceased, by virtue of the Rent Act, 1957, s. 11 (1), to apply on 6th July, 1957.

"2. The defendant was on the said date tenant of the said dwelling-house and retained possession thereof after the said date, and on 195 , the plaintiff served on the defendant a notice to determine his right to possession thereof on , 195 .

The plaintiff claims possession of the said dwelling-house."

If the "occupier" has failed to pay the "rent" (double gross value, etc.) authorised by s. 2 (2) of the Act a claim for the amount due can, of course, be added.

Notice to defendant

Though an action for possession can, and, in apt circumstances may well, be brought in the High Court and advantage taken of the Ord. 3, r. 6, procedure, the plaintiff will not get his costs (s. 4 (1)); while if he sues in the county court, a useful step is made available by the (amended) Rent Restrictions Rules, 1957, r. 5 (*a*): the plaintiff may, not less than seven days before the hearing, give the defendant and the registrar a notice requiring the defendant to inform him and the registrar not later than four days before the hearing whether he proposes to apply for suspension or not.

Applications

The same rules provide (r. 3) that an application to the county court under the Rent Acts, the Act of 1957, or the Act of 1958, shall be made by way of originating application to the court for the district in which the premises are situate. This governs such an application as that which can be made for further extension, or for variation of rent (s. 3 (4)) but has nothing to do with claims for possession, which are covered by r. 2 and are to be instituted and prosecuted in accordance with the County Court Rules to which I have referred.

R. B.

HERE AND THERE

SEE THEM JUMP

PEOPLE have got into a stale, dead, automatic habit of talking of an "Alice in Wonderland" situation whenever any happening strikes them as faintly absurd or somewhat unconventional. In the same way, the sleep-talking habit of using words as dead counters instead of bright ringing coins has completely blurred the full, fine fantasy of the vision of women whose tongues run away with them, men who lose their heads or whose fingers are all thumbs, or children whose eyes are bigger than their stomachs. All the same, one does sometimes actually meet characters who are akin to the splendid figures of speech evoked by popular language when it was still fresh and vital and spontaneous, characters who really seem to be cousins to the Mad Hatter and Humpty Dumpty. Such a character passed fleetingly across the legal scene quite recently, but, in case his brief performance passed unnoticed among other more spectacular happenings, he is worth recalling, even though he only played on the remote provincial stage of the Hexham magistrates' court. He was charged with stealing sticks of pit explosive and his defence, unique surely among the possible, probable or improbable motives for such an offence, was that he "wanted to make his cabbages jump." The cabbage, we know, is almost proverbially a stolid and unimaginative vegetable, neither emotional nor fanciful in its temperament, and one's first reflection on reading that piece of news was that, tempting as it may be to play a somewhat elementary practical joke on such a plant, one is unlikely to be entertained by any startling reflex action on its part. No one has yet composed the choreography of a leaping ballet of cabbages. A highly strung French bean might perhaps give a convulsive start. A nervous pea might easily jump out of its pod. There is at any rate some evidence, as the lawyers say, that the sweet potatoes started from the ground while General Sherman was marching through Georgia. But Orpheus with his lute would scarcely move a cabbage and detonations however loud do not seem likely to be any more successful. However, the excuse offered was accepted, although the theft was

visited by a fine. The police superintendent testified that the accused was a keen gardener and that his method was to use the explosive in connection with his spring cabbage. His purpose was not to make it spring in the air but to make it grow more quickly. A police sergeant in corroboration said it was an old idea in the district that the nitrogen in the explosive would act as a fertiliser. So, after all, you too can make your cabbages jump.

DOMESTICATING THE MENACE

DOUBTLESS, turning explosives into cabbages is the modern equivalent of beating swords into ploughshares. Villainous saltpetre digged out of the bowels of the harmless earth to lay many a good tall fellow low can now be digged back again to better purpose. St. George should not have killed the dragon ; he should have domesticated him, perhaps using his fiery breath to inaugurate a system of central heating for the palace of the princess. It is a soothing reflection when the monstrous dragon of nuclear fission has all the terrors of novelty. See how affectionate we have become towards that other fiery dragon the locomotive engine, once so terrible and irresistible and kept at arm's length by all well-regulated towns. Now, when he seems on the eve of extinction, societies are formed to befriend him and no local line through meadow or mountain is closed down without the tribute of a regretful tear. He is almost as domesticated as the dog, who after all is the hearth-rug descendant of the common ancestor of wolves and bears. But come back to explosives and their happy domestication. It is not only in the vegetable garden that they have found congenial employment. Another recent newspaper heading seems to suggest that after labouring in the garden they are accorded a well-merited repose with the family. " Explosives in Easy Chair " said the heading. One likes to fancy them sipping a delicious cup of that China tea which used to be known as " Gunpowder." As a matter of fact the actual story is hardly less picturesque than the fancy. Six months ago a Manchester housewife bought a fireside chair from an Irish neighbour who was emigrating to America, and very appropriately placed it close to the fire in the kitchen of her home at Chorlton-on-Medlock. It must have been in constant use, for she had a husband and six children ranging in age from two to twelve, and in those circumstances it must have given a good deal of very active service. Then came news which for once merits the metaphor of a " bomb-shell." The former owner wrote to tell her that the chair contained enough explosive " to blow up a street." This sensational information had been revealed in a curiously circuitous way. A man now serving a prison sentence for armed robbery had hidden the explosive in the chair. The British police learnt of it. They told the Federal Bureau of Investigation in America. The F.B.I. told the Irish emigrant. The Irish emigrant told the purchaser. The purchaser hastily locked the room and told the police. So next time you buy a second-hand chair don't take it for granted that it's a fortune in £50 notes that you'll find stuffed into the lining.

RICHARD ROE

RENT ACT PROBLEMS

Readers are cordially invited to submit their problems, whether on the Rent Act, 1957, or on other subjects, to the " Points in Practice " Department, " The Solicitors' Journal," Oyez House, Breams Buildings, Fetter Lane, London, E.C.4, but the following points should be noted :—

1. Questions can only be accepted from registered subscribers who are practising solicitors.

2. Questions should be brief, typewritten, *in duplicate*, and should be accompanied by the sender's name and address *on a separate sheet*.

3. If a postal reply is desired, a stamped addressed envelope should be enclosed.

Section 13—PREMIUMS FOR DECONTROLLED TENANCIES—PURCHASE OF 999-YEAR LEASES

Q. Tenants of premises, decontrolled by the Rent Act, 1957, because of rateable value, were offered and have been granted leases for 999 years subject to a ground rent of £1 a year and payment of a purchase price of (e.g.) £3,000. The question has been raised whether under s. 2 of the Landlord and Tenant (Rent Control) Act, 1949, as extended by s. 13 of the Rent Act, 1957, and despite s. 38 of the Housing Repairs and Rents Act, 1954 (which seems to govern only assignments), the purchase price may constitute a recoverable premium. The legislation on the point seems such as in principle might extend to the sums so paid, but our impression is that everything turns on s. 2 (1) of the 1949 Act, that the arrangement did not amount to the imposition by the landlord of a *condition* (since the tenants could have rested on their temporary rights under the Act if they so chose), and that in any event the interest granted cannot be the renewal or continuance of a Rent Act tenancy. The Rent Acts relate to occupational tenancies, and even allowing for a transmission, they cannot embrace more than a lifetime and a personal interest. Such a long term seems quite outside the Act. The offer to the tenants and their acceptance was evidenced by written contract.

A. In our opinion, while whether a payment is " required " and whether it is required " as the condition of the grant " are essentially questions of fact, the landlord would have an even stronger case, on being called upon to repay the sums, than had the defendant in *Woods* v. *Wise* [1955] 2 Q.B. 29. The reasoning in the judgment of Evershed, M.R., appears to contain all that the landlord would require (see pp. 48, 49). While the other line suggested—the transaction was a sale *pro tanto*, and the money not a premium at all—is attractive, we would be less sanguine about its prospects of success. The Rent Act, 1957, s. 13 (1), has gone out of its way to extend the restriction to tenancies with rents of less than two-thirds the rateable value (the Housing Repairs and Rents Act, 1954, s. 38, is, incidentally, repealed: Rent Act, 1957, Sched. VIII), and it could be pointed out that s. 13 (1) concerns not only renewal and continuance, but also " grant."

Four-weekly Rent Payments—DATE FOR TERMINATION OF TENANCY—DATE FROM WHICH INCREASED RENT UNDER 1958 ACT PAYABLE

Q. A is the tenant of an unfurnished private dwelling-house decontrolled by the Rent Act, 1957. *A* has paid his rent four-weekly. The last payment day prior to 6th October, 1958, was 22nd September, 1958. On 17th July, 1957, the landlord's solicitors served a Form S on behalf of the landlord. The date for possession in Form S is 7th October, 1958. County court proceedings for possession have now been served on *A* based on the notice, and rent at twice the gross value claimed from 6th October, 1958, to the date of the

hearing. In view of the rent payment day, (i) is this notice good to determine *A's* tenancy; (ii) can the increased rent be claimed as from 6th October, 1958?

A. (i) The notice is, in our opinion, good to determine *A's* tenancy; provision for such an eventuality is made by Sched. IV, para. 2 (5), to the Rent Act, 1957. (ii) The "rent" of twice the 1956 gross value is, we consider, payable by and due from the ex-tenant occupier as soon as he qualifies for and exercises his right to the protection of the Landlord and Tenant (Temporary Provisions) Act, 1958; again, express provision has been made, we consider, for apportionment by the insertion of the words "or part of a rental period" in s. 2 (2) of the Act.

Retrospective Variation of Gross and Rateable Values—Validity of Notice to Determine Previously Served—Effect on Rent under 1958 Act

Q. We act for the landlord of a dwelling-house (not in London) which prior to the passing of the Rent Act, 1957, was let to the present tenant thereof unfurnished at a rental of £1 per week, the tenant paying the rates. The gross and rateable values of the property as at 7th November, 1956, were £50 and £40 respectively, and on 1st November, 1957, we served a notice to quit on the tenant in the Form S of Sched. IV to the Rent Restrictions Regulations, 1957, and such notice stated that the rateable value was £40, as in fact it then was. Such notice expired on 11th October, 1958, but the tenant still holds over. No three-year agreement has been entered into, and it is not proposed to negotiate for one. On 15th November, 1957, however, the gross and rateable values were on appeal reduced to £46 and £36 respectively, and such reductions were made retrospective to 1st April, 1956. (*a*) Has the subsequent retrospective reduction in the rateable value invalidated the notice to quit? (*b*) Assuming that the reply to (*a*) is in the negative (as we believe it should be), what is the rent payable by the tenant as from 11th October, 1958, under s. 2 of the 1958 Act? Is it double £50 or double £46?

A. (*a*) We do not consider that the retrospective reduction has invalidated the Form S notice; the statement of the rateable value correctly stated the figure *then* (Sched. V, para. 1 (*a*)) shown in the valuation list, and the modifications in Pt. II of that Schedule do not provide for actual ascertainment to be retrospective ("shall be ascertained": para. 6). (*b*) But the effect of the para. 6 just cited is, in our opinion, that an "ascertainment" of the rent to be paid by the occupier under the Landlord and Tenant (Temporary Provisions) Act, 1958, s. 2 (2), must be made by reference to the variation (it being assumed that that variation was made in pursuance of a proposal either (1) made before 1st April, 1957, or (ii) made on the ground of a change in the occupier or in the circumstances of occupation), so that "double £46" will be payable.

Notice of Increase—Operation Delayed more than Nine Months until Certificate of Disrepair under 1954 Act Discharged—Whether Full Increase Payable Immediately

Q. A certificate of disrepair issued under the Housing Repairs and Rent Act, 1954, was still in force on the coming into force of the Rent Act, 1957. A notice of increase of rent under the 1957 Act was served upon the tenant while the certificate of disrepair was still in force, but the notice was not to take effect while the certificate of disrepair was still in force. Finally the repairs required by the certificate of disrepair were completed and application was made to the local authority to discharge the certificate of disrepair and this was done. Application was then made to the tenant for payment of the rent as increased by the notice of increase, for the rental period beginning after the discharge of the certificate of disrepair. The increase required by the notice exceeded 7s. 6d. per week. Since more than nine months has elapsed since the service of the notice of increase, the landlord has contended that he is immediately entitled to the whole of the increase, but the tenant contends that he is liable to pay only an increase of 7s. 6d. for a period of six months. Who is correct, please?

A. In our opinion the landlord is entitled to the full increase provided the notice expressly contained a provision that that amount was not to be payable until at least nine months after its service. It is not necessary for the notice to increase the rent in two steps, but if it is desired to increase the rent before nine months have elapsed after service of the notice then the first increase cannot exceed 7s. 6d. a week.

"THE SOLICITORS' JOURNAL," 30th OCTOBER, 1858

On the 30th October, 1858, the Solicitors' Journal reported: "At the Bury St. Edmund's Quarter Sessions held on the 25th inst., James Burroughs was charged with stealing a coat . . . The prisoner pleaded not guilty. The recorder inquired if anyone had been instructed to prosecute and received an answer in the negative. The clerk of the peace said he was not surprised at attorneys not attending. If an attorney came into the court the Treasury allowed him one guinea and if he required a copy of the depositions he could only obtain it by paying 10s. for it out of the small fee he was allowed for attending here. The recorder said that there was a very respectable society of solicitors and they ought to make it a matter between themselves and the Government. What was the use of bringing the profession there; shortly they would have no Bar.

The Clerk of the Peace: 'And shortly no witnesses. The witnesses are greatly dissatisfied with their allowances and there is great difficulty in getting them to come forward.'

The Recorder: 'With that I have nothing to do; it can be remedied in the proper constitutional way.'

Mr. J. H. Mills, a senior member of the Bar, wished to mention that the course adopted in every case when an attorney did not appear was to hand the depositions over to counsel. The recorder said one branch of the profession was to instruct the other and if they lost sight of that either one or other of the branches might seek to combine the two. Mr. J. H. Mills said that by the settled scale of fees the allowance to counsel was £1 3s. 6d. and £1 1s. to the attorney. The clerk of the peace did not think an attorney would come here for a day if he was only allowed a guinea and had to prepare the brief and pay 10s. for depositions."

The Lord Chancellor has appointed Mr. Justice Ashworth to the Law Reform Committee in place of the Lord Chief Justice, who has resigned from the Committee.

Mr. K. P. de la Bastide, assistant to the Attorney-General, Trinidad and Tobago, has been appointed Puisne Judge to that colony.

Mr. C. E. G. Phillips, senior Crown Counsel, Trinidad and Tobago, has been appointed Puisne Judge in Trinidad and Tobago.

Mr. Ernest Claud Stimpson, Official Receiver at Nottingham since 1950, whose area includes Derby, Burton, Leicester, Nottingham, Boston and Lincoln, is to retire next month.

REVIEWS

Kennedy's Civil Salvage. Fourth Edition. By KENNETH C. MCGUFFIE, B.L., of Gray's Inn, Barrister-at-Law. 1958. London: Stevens & Sons, Ltd. £5 5s. net.

To most of us the law of salvage is a closed book. It is not part of the common law and its basis is quite distinct from our notion of contract for a man may be liable for salvage against his will, the test being whether a reasonably prudent seaman would refuse help in the circumstances, and the offer of help must be voluntary. But if by chance one had to find out the law without the opportunity of an expert's help, one could not do better than to turn to Kennedy.

The book is pertinently written, well arranged and comprehensive. Of particular interest is the first chapter on what is meant by "danger" and the reality of danger. Whether a ship is in danger or not depends not only on its locality and the risks to which it is exposed but also to the skill of the master in charge. This concept of the relativity of danger is one which might well be imported into other branches of the law. Of almost equal interest is the discussion of voluntariness, of the relationship of moral obligation to that attitude and the effect of the intrusion of self-preservation.

In addition to these matters we have the fact that there is no right to salvage reward proper unless there is some success at least, and the further fact that proceedings may be *in rem*, i.e., against the vessel itself, as well as *in personam*.

This work is well illustrated with extracts from the leading cases and anyone having to find his way in this very different legal world may turn with confidence to Kennedy, whilst those who work in this field will find that the new edition sets a high standard.

Cases on the Law of Torts. Second Edition. By CECIL A. WRIGHT, Q.C., LL.D. 1958. London: Butterworth & Co. (Publishers), Ltd. £2 15s. net.

The perfectionist eschews case-books and insists that the student reads the reports in the original. But this is no world for perfectionists and the practical man knows how valuable the case book can be: to read a text-book which must basically be a summary of the pure legal principles having only a modicum of extracts from cases—and those extracts often little more than the headnote—is usually heavy going for the average student, but give him a particular case to read, with the facts and a full extract from the reasoned judgment as well, and his difficulties of understanding soon begin to melt. There are also many students who have not a library within reasonable access, and for these a case book is a great asset.

This particular example of a case-book is extremely good value for money, for not only does it give a very full representation of the leading English cases, it also throws in for good measure extremely well-reasoned analyses of basic problems by way of comment and a goodly number of dominion and American decisions. A student of the law of torts who makes full use of this book will be a formidable adversary to the examiner.

Coroners' Practice. By GAVIN THURSTON, M.R.C.P. (Lond.), D.C.H., of the Inner Temple, Barrister-at-Law, H.M. Coroner for the Western District of the County of London. London: Butterworth & Co. (Publishers), Ltd. £1 1s. net.

That a coroner should be a medical man is not a requisite qualification; in fact, out of the thirteen whole-time coroners of England and Wales only eight are doctors. Of the part-time coroners—about 267 in number—less than one-tenth are medically qualified, but to carry out the duties of the office satisfactorily more than a little medical knowledge, if not a *sine qua non*, is desirable, and that is where Dr. Gavin Thurston's book fills the bill. He is not only a barrister but a well-qualified medical man, and as whole-time coroner of a London district has wide experience in all branches of the office. One might conclude, from the modest announcement of the book by its publishers, that the main purpose of Thurston's Coroners' Practice was to inform those on the fringe of coronership. This, however, is an understatement, for in no other book accessible to non-medical inquirers can such valuable and essential information as is contained in chaps. IV, VI, VII and IX be found.

In chap. VI, pp. 84–88, the subject of deaths in which a medical mishap may have occurred is dealt with fully. Later, on p. 158, the author states that in an operation case the surgeon must always be called as a witness. This is not the general practice throughout the country in inquests following reports by registrars of deaths on deaths under operations or before recovering from the effects of anæsthetics. Unless there appears to have been an operative mishap the evidence of a houseman present during the operation is generally accepted in the place of the surgeon, nor is the presence of the anæsthetist usually required if the pathologist's report states that the death could not be attributed to the anæsthesia employed. This kind of inquest is often as much in the interest of the doctors as for the protection of the public. If, as the author states, major operations are ever performed by recently qualified or inexperienced doctors the full inquiry in public should quickly cause the hospital management committee to restrain such practices.

To cover completely the scope of the coroner's work more space might have been devoted to treasure trove inquests and something might have been written on the investigation of the causes of London fires, though neither of these subjects is of frequent happening. None the less, coupled with the forms prescribed for the use of coroners, little more than is contained in Thurston is required by either coroners or their officers, to whom it can be heartily recommended. It might have an even wider appeal if it were of a size suitable for carrying in the pocket. The cost, 21s., is for these times remarkably low, especially as the printing and production generally leave nothing to be desired.

The Assize and Quarter Sessions Handbook. By CYRIL E. S. HORSFORD, M.A., of the Inner Temple, Barrister-at-Law. 1958. London: Sweet & Maxwell, Ltd. 17s. 6d. net.

This is a book of one hundred and twenty-nine pages and its title sufficiently explains its purpose. The subjects are dealt with in alphabetical order; some, such as "Appellate Jurisdiction," are covered adequately and others, such as "Breaking" and "Larceny," in only a few lines. The book is not long enough to be a substitute for the larger works like Archbold but, if used in conjunction with them, it will be found useful in giving summaries of the law on a number of matters. Mr. Horsford's notes on some subjects are well-written and provide an excellent "nutshell guide." We should like to have seen more space given to "Probation," however, and there are a few errors of law.

The Magistrate. By Sir ALISON RUSSELL, K.C.M.G., K.C., formerly Chief Justice, Tanganyika Territory. Second Edition by G. R. OSBORN, Colonial Administrative Service (ret.). 1958. London: Butterworth & Co. (Publishers), Ltd. £1 5s. net.

This book is primarily designed for the use of magistrates and district officers in Crown Colonies and Protectorates. It will be extremely useful for such persons and contains advice which will be invaluable to young men starting on their judicial duties in the Colonies. Differences in the law make the book one which cannot be recommended for indiscriminate use by English lay justices but it could be read with profit by experienced ones.

Also, the advice in it on the principles which should guide a magistrate in regard to interest, conduct in court and other matters is so soundly and well expressed that the book will provide excellent notes for a lecturer speaking to newly-appointed justices.

Money at Work. A Survey of Investment. Edited by Milton Grundy, M.A. 1958. London: Sweet & Maxwell, Ltd. 17s. 6d. net.

This is a series of essays, each written by an expert in his or her particular field, on investment. It is comprehensive in that it includes advice on Chinese works of art and on stamp collecting, and for that reason in the wrong hands might well be a danger. Solicitors are often asked for advice on investment and within limits are qualified to give it. Those who read this book will do so with pleasure and they will widen their horizons, but if they are wise they will continue to work within the same limits as before, for nowhere else is the warning against a little learning more needed.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

MORTGAGE: WHETHER MORTGAGEE ENTITLED TO ORDER FOR SALE

Karachiwalla *v.* Nanji

Lord Radcliffe, Lord Tucker and The Rt. Hon. L. M. de Silva

2nd October, 1958

Appeal from the Court of Appeal for Eastern Africa.

Section 67 of the Indian Transfer of Property Act, 1882, provides: "In the absence of a contract to the contrary, the mortgagee has at any time after the mortgage money has become payable to him . . . a right to obtain from the court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold." By a mortgage the mortgagor covenanted, *inter alia*, to repay the sum advanced by twenty-five half-yearly instalments, the first instalment to be paid on 30th June, 1952, and the remaining twenty-four at the end of every six months, and thereafter the balance by eight half-yearly instalments, thus paying off the whole amount by 30th June, 1968. The mortgage contained the following proviso for redemption: "The mortgagee hereby covenants with the mortgagor that if the mortgagor shall repay the total principal sum advanced under these presents together with interest thereon due as hereinbefore provided by 30th June, 1968, the mortgagee will at any time thereafter after the expiry of the stipulated date at the request and cost of the mortgagor reassign and surrender the lands and all buildings to the mortgagor as he the mortgagor may direct." The mortgagor, who had defaulted in payment of principal and interest, was notified in accordance with the terms of the mortgage that unless he complied with its terms the mortgagee would take action to enforce the mortgage. The mortgagor did not comply with the notice, and the mortgagee obtained a decree of sale. The mortgagor appealed.

LORD RADCLIFFE, giving the judgment, said that the appellant's main argument was that the proviso for redemption in the mortgage amounted to an agreement that so long as the mortgage money and interest were paid up by 30th June, 1968, the mortgagor should be entitled to the return of his security on that date or thereafter. It was said that the mortgage was so drawn that nevertheless the undertaking for reconveyance on or after 30th June, 1968, remained in force so that until that date the mortgagor had a continuing chance of recovering his property by tendering the full amount of principal and interest contracted for. Such an undertaking then amounted to a "contract to the contrary" within s. 67 of the Transfer of Property Act, 1882, and therefore precluded the possibility of a sale or foreclosure under the process of the court before that date. Their lordships were of opinion that the scheme agreed on was easily intelligible from the document read as a whole and its total effect could be summarised under the following heads: (1) The mortgagor was to pay interest monthly on sums outstanding on the mortgage, to pay off the principal by the instalments and at the dates specified and, if the instalments were paid off, according to that schedule, thus wiping out the debt by 30th June, 1968, and interest were paid monthly in the meantime, the security was to be reconveyed on or after that date; (2) on the other hand, if the mortgagor failed to observe any of his various covenants and obligations under the mortgage deed, including his obligation to pay instalments and current interest, the mortgagee was entitled from 1st January, 1952, to give five weeks' notice calling in the whole principal sum then outstanding and to resort to a court of law to enforce the payment by any form of process which it might be within the power of the court to grant. So construed, the mortgage deed contained no "contract to the contrary" within the meaning of s. 67. Appeal dismissed.

APPEARANCES: *H. E. Francis* (*Herbert Oppenheimer, Nathan and Vandyk*); *Arthur Bagnall* (*Waltons & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[3 W.L.R. 572**

LICENSEE: SPRING-BOARD: FATAL DIVE INTO SHALLOW SEA: LOCAL AUTHORITY OCCUPIERS OF BOARD: NOT LIABLE

Perkowski *v.* Wellington Corporation

Viscount Simonds, Lord Morton of Henryton, Lord Keith of Avonholm, Lord Somervell of Harrow, Lord Denning

14th October, 1958

Appeal from the Court of Appeal of New Zealand.

The appellant's husband died on 10th January, 1954, as a result of injuries suffered when he dived at low tide from a spring-board into shallow water at Worser Bay, Wellington, New Zealand. The board, which was on a platform at the end of a wooden duck-walk, had been erected some years earlier by the respondents, the Corporation of Wellington, at the request of a swimming club to replace a previous board. The platform was on a concrete support set in the harbour bed (which was vested in the Marine Department). On a claim for damages brought by the appellant against the corporation under the Deaths by Accident Compensation Act, 1952, on the basis that the deceased was a licensee, the jury found, *inter alia*, that the corporation were the occupiers of the premises comprising the spring-board—which was not challenged—and that the spring-board did not constitute a concealed danger at low tide. After argument on the findings of the jury the trial judge entered judgment for the respondent corporation, and an appeal from that judgment was dismissed by the Court of Appeal of New Zealand on 12th October, 1956. The appellant now appealed to the Board by special leave *in forma pauperis*.

LORD SOMERVELL OF HARROW, giving the judgment, said that the authorities on the duty of occupier to licensee were considered by Farwell, L.J., in *Latham* v. *R. Johnson & Nephew* [1913] 1 K.B. 398. As a licensee the deceased must take the land as he found it, and the corporation as occupiers owed him no general duty of care other than to warn him against concealed dangers in the nature of a trap—which the jury's answer negatived. There could be no logic in drawing a distinction between the state of the land when the occupier went into occupation and its state when changes had been made by him. Further, the fact that the concealed danger was that of injury outside the occupied area, whether in the sea or on a highway or in adjacent property, on principle would not seem to prevent the application of the rule. The appellant further sought to argue that the deceased was not a licensee but either an invitee or a person to whom the corporation owed a general duty of care. The principle invoked was adopted and applied in *Plank* v. *Stirling Magistrates* [1956] S.C. 92. The appellant not having taken the point at the trial the Court of Appeal refused to allow it to be taken, and the Board would not permit it to be taken now: see *Connecticut Fire Insurance Co.* v. *Kavanagh* [1892] A.C. 473 and *North Staffordshire Railway Co.* v. *Edge* [1920] A.C. 254, at p. 263. Appeal dismissed.

APPEARANCES: *B. MacKenna*, Q.C., *J. G. Le Quesne* and *Robin Cooke* (*Arnold, Fooks, Chadwick & Co.*); *H. A. P. Fisher* (*Wray, Smith & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[3 W.L.R. 564**

Probate, Divorce and Admiralty Division

DIVORCE: SUBMISSION OF NO CASE: ELECTION

Wilson *v.* Wilson

Karminski, J. 16th July, 1958

Defended petition by the wife for divorce on the ground of cruelty, heard at Birmingham Assizes.

The wife by her petition alleged cruelty by the husband, which he by his answer denied. At the conclusion of the wife's case counsel for the husband submitted that there was no case to answer and, further, that he was entitled to make such a submission without being put to his election whether or not to call evidence.

KARMINSKI, J., said that before the decision of the Court of Appeal in *Alexander* v. *Rayson* [1936] 1 K.B. 169, there was some doubt whether in matrimonial suits counsel submitting no case to answer should be put to his election to call no evidence, but after that decision it became the general practice that, although necessarily the court had a judicial discretion in the matter, nevertheless counsel should be put to his election before making his submission. The cases of *Gilbert* v. *Gilbert and Abdon* (*Adams intervening*) [1958] P. 131 and *Lance* v. *Lance and Gardiner* [1958] P. 134*n*, in which it was decided to allow counsel to make a submission of no case without putting him to his election were to be distinguished from the present, in that they related to the position of a co-respondent or an intervener when charges of adultery were made. In the present case his lordship felt that he ought not to depart from the well-established practice of the Division, now maintained for over twenty years, that counsel in making a submission must be put to their election. There was a discretion, but that discretion should be somewhat sparingly exercised, and then only in quite exceptional circumstances. There were not any exceptional circumstances in this case and counsel for the husband would be put to his election.

APPEARANCES: *M. E. Holdsworth* (*Blackham, Maycock & Hayward*, Birmingham); *A. W. M. Davies* (*Charles L. Ladds*, Birmingham).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [1 W.L.R. 1090

IN WESTMINSTER AND WHITEHALL

HOUSE OF COMMONS

QUESTIONS

RESTRICTIVE PRACTICES COURT

The PRESIDENT OF THE BOARD OF TRADE said that on 3rd October the Board of Trade had given a direction to the Registrar of Restrictive Trading Agreements which had had the effect of enabling him to start proceedings on agreements not covered by the previous directions without having to wait until proceedings had been instituted in respect of all those so covered.

The new direction marked the completion of another stage in the operation of the Restrictive Trade Practices Act, 1956. Before the office of the Registrar was fully established and had gained experience, the Board of Trade, from the knowledge which it possessed, had given directions to ensure that a high proportion of significant and representative cases came before the Restrictive Practices Court at an early stage. The Board of Trade considered that no further directions were needed, and that the Registrar should now exercise his full responsibility under the Act for bringing cases before the court. The final direction had been necessary in order to release him from obligations which had limited his discretion in the matter, and which would have required the court to examine a large number of agreements on a range of goods defined in the earlier directions before hearing any cases whatever relating to other industries.

The direction had been given at the beginning of October so that the permanent responsibilities of the Registrar would be established before the court started its sittings on 6th October.

[23rd October.

STATUTORY INSTRUMENTS

Act of Sederunt (Alteration of Court of Session Fees), 1958. (S.I. 1958 No. 1719.) 4d.

Agriculture Act, 1958 (Appointed Day) (Scotland) Order, 1958. (S.I. 1958 No. 1705.) 4d.

Coroners (Fees and Allowances) (No. 2) Rules, 1958. (S.I. 1958 No. 1716.) 4d.

County of Stafford (Electoral Divisions) Order, 1958. (S.I. 1958 No. 1698.) 5d.

Hydrocarbon Oil Duties (Drawback) (No. 3) Order, 1958. (S.I. 1958 No. 1718.) 5d.

Importation of Hay and Straw (Amendment) Order, 1958. (S.I. 1958 No. 1690.) 4d.

Maidstone By-Pass Special Road Scheme, 1958. (S.I. 1958 No. 1699.) 8d.

Padiham Water Order, 1958. (S.I. 1958 No. 1728.) 5d.

Profits Tax Regulations, 1958. (S.I. 1958 No. 1706.) 5d.

Registration of Births, Deaths and Marriages etc. (Fees) (Scotland) Regulations, 1958. (S.I. 1958 No. 1720.) 5d.

Retention of a Pipe under Highways (County of York, East Riding) (No. 2) Order, 1958. (S.I. 1958 No. 1677.) 5d.

Safeguarding of Industries (Exemption) (No. 6) Order, 1958. (S.I. 1958 No. 1691.) 5d.

Stopping up of Highways (County Borough of Barrow-in-Furness) (No. 1) Order, 1958. (S.I. 1958 No. 1683.) 5d.

Stopping up of Highways (County of Bedford) (No. 6) Order, 1958. (S.I. 1958 No. 1707.) 5d.

Stopping up of Highways (County of Bedford) (No. 7) Order, 1958. (S.I. 1958 No. 1685.) 5d.

Stopping up of Highways (County of Berks) (No. 7) Order, 1958. (S.I. 1958 No. 1692.) 5d.

Stopping up of Highways (County of Chester) (No. 15) Order, 1958. (S.I. 1958 No. 1684.) 5d.

Stopping up of Highways (County of Derby) (No. 16) Order, 1958. (S.I. 1958 No. 1686.) 5d.

Stopping up of Highways (County of Derby) (No. 17) Order, 1958. (S.I. 1958 No. 1687.) 5d.

Stopping up of Highways (County of Hertford) (No. 13) Order, 1958. (S.I. 1958 No. 1711.) 5d.

Stopping up of Highways (London) (No. 41) Order, 1958. (S.I. 1958 No. 1708.) 5d.

Stopping up of Highways (London) (No. 42) Order, 1958. (S.I. 1958 No. 1693.) 5d.

Stopping up of Highways (London) (No. 44) Order, 1958. (S.I. 1958 No. 1712.) 5d.

Stopping up of Highways (County of Northampton) (No. 8) Order, 1958. (S.I. 1958 No. 1709.) 5d.

Stopping up of Highways (City and County Borough of Nottingham) (No. 1) Order, 1958. (S.I. 1958 No. 1713.) 5d.

Stopping up of Highways (City and County Borough of Sheffield) (No. 8) Order, 1958. (S.I. 1958 No. 1714.) 5d.

Stopping up of Highways (County of Stafford) (No. 14) Order, 1958. (S.I. 1958 No. 1710.) 5d.

Stopping up of Highways (County of Surrey) (No. 7) Order, 1958. (S.I. 1958 No. 1688.) 5d.

Training of Teachers Grant Amending Regulations No. 3, 1958. (S.I. 1958 No. 1697.) 5d.

Witnesses' Allowances Regulations, 1958. (S.I. 1958 No. 1717.) 4d.

Mr. ALBERT REGINALD HAIGH has been appointed an Assistant Official Receiver for the Bankruptcy District of the County Courts of Birmingham, Coventry, Dudley, Hereford, Kidderminster, Leominster, Stourbridge, Walsall, Warwick, West Bromwich, Wolverhampton and Worcester.

Mr. WALTER WILLIAM JORDAN has been appointed Official Receiver for the Bankruptcy District of the County Courts of Nottingham, Boston, Burton-on-Trent, Derby and Long Eaton, Leicester, Lincoln and Horncastle, with effect from 29th November, 1958.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of " The Solicitors' Journal "]

As One Sheepdog to Another . . .

Dear Mr. Editor,—I enjoyed reading the letter from " A. Collie " the other week. I am also a sheepdog, but my master is unlike other farmers because his brother is clerk to the local magistrates. My life is less happy than that of other sheepdogs, as I have to endure insults far worse than " nasty " from my master's brother. He often calls me a nuisance, but he prefaces this word with another word which I know to be very bad as the under-cowman often uses it when he is in a bad temper. I am told by my master that this is because I, and all the other sheepdogs in the district, waste a lot of his brother's time when our masters apply on our behalf for exemptions from dog licences. My master says that 7s. 6d. is worth more to him than my occasional discomfort and ignores my plea that he should buy me a licence and so save me from his brother's wrath.

But what I cannot understand is why we should need exemptions. I have never seen any policeman counting my sheep or watching me at work, though I do not doubt that A. Collie's memory is correct (I wonder if her pedigree is as long). I can't see why I shouldn't do without a licence, and then if our local policeman (who knows me very well any way) should say that my master must go to court on market day, for having no licence for me, my master could say that I am a sheepdog and don't need one. All this applying for an exemption seems a bit silly to me.

" LASSIE,"
A Westmorland Sheepdog.

Home Ownership and Registration of Title

Sir,—The Registry has never claimed as the foremost of the advantages of the registration system the amount of costs which purchasers of registered land save. Nevertheless, in spite of the increase in registered conveyancing costs resulting from the Solicitors' Remuneration (Registered Land) Order, 1953, the registered purchaser's advantage in this respect over a purchaser of unregistered land is considerable and a great deal more substantial than suggested by Mr. Anthony Grant in his letter published in your issue of the 25th October. Mr. Grant states that a purchaser of a house for £2,000 with a 90 per cent. loan from a building society with the same solicitor acting for the purchaser and the society saves £5 5s. in costs when the title to the land is registered and £6 12s. 6d. in a similar transaction when the purchase price is £3,000. Although these figures (which cover solicitors' remuneration, stamp duties, Land Registry fees and local searches) are correct, Mr. Grant's statement of the percentage saving in the case of registered land is very wide of the mark. He puts this at less than 3 per cent., whereas in the £2,000 case the purchaser is saved £5 5s. in £55, that is, 9·5 per cent. of the total cost; at the £3,000 level he saves 8·6 per cent. But that is not all, because if, as often happens, separate solicitors are employed by the purchaser and the building society, the percentage of saving is 18·7 per cent. at £2,000 and 18·1 per cent. at £3,000. If the mortgagee is not a building society the percentage savings are of the order of 18 and 17 per cent. respectively when the same solicitor is employed and 25 and 24 per cent. respectively when separate solicitors act. Nor does the very considerable saving of costs end there because in each of the cases cited above the registered vendor gains by no less than 33·3 per cent. over his counterpart in unregistered conveyancing.

G. H. CURTIS,
Chief Land Registrar.

H.M. Land Registry,
London, W.C.2.

NOTES AND NEWS

Honours and Appointments

Mr. LIONEL JELLINEK, M.C., has been appointed a Judge of County Courts. He will be the judge of the Circuit comprising Epsom, Guildford, Dorking, Farnham, Reigate and Horsham County Courts, in place of His Honour Judge Gordon Clark, deceased.

Mr. ROBERT HUGH MAIS has been appointed a judge of County Courts. He will be one of the Judges of the West London County Court.

Personal Notes

Mr. Frederick Martin, who retired on 30th June from his position as solicitor and Chief Clerk at the Preston office of the Lancashire Chancery Court, was presented with an inscribed gold wristlet watch from his old colleagues, by Mr. James Dewhurst, the President of the Preston and District Law Society, at the Law Society Library, Chapel Walks, Preston, on Thursday, 16th October.

Miscellaneous

COMPENSATION FOR COMPULSORY RIGHTS, ACQUISITIONS, ETC.

OPEN-CAST COAL

An Inland Revenue notice announces that the work formerly carried on by the Ministry of Works in connection with compensation for property affected by open-cast coal mining operations has been taken over from 30th September, 1958, by the Inland Revenue District Valuers, who are also responsible from that date for negotiations for the use of land for open-cast purposes.

Wills and Bequests

Mr. J. F. Best, solicitor, of Huddersfield, left £33,737 net.

Mr. J. Elmhirst, solicitor, of Elvington, Yorkshire, left £75,459 net.

SOCIETIES

The following programme is arranged for the SOLICITORS' ARTICLED CLERKS' SOCIETY: 4th November, Debate—" This House regrets that a woman can't be more like a man." At The Law Society's Hall, at 6 p.m. 18th November: A play-reading at The Law Society's Hall, at 6 p.m. 20th November: Annual General Meeting at The Law Society's Hall.

PRACTICE NOTE

Trial of Matrimonial Causes on Circuit

The President, after consulting the Lord Chief Justice, has directed that matrimonial causes remitted for trial from one divorce town to another are to be entered in the list at the later town in order of setting down and are, unless a judge in person otherwise directs, to come on for trial accordingly, a cause originally set down for trial at the later town taking precedence over a remitted cause set down elsewhere on the same date.

B. LONG,
Senior Registrar,
23rd October, 1958. Divorce Registry.

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).